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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ANITA PATEL,	)	No. C 07-2919 SI
Petitioner,	)	
v.	)	<b>ANSWER</b>
ALBERTO GONZALES, in his official capacity,	)	
Attorney General, United States Department of	)	
Justice, et al.,	)	
Respondents.	)	

Respondents hereby submit their answer to Petitioner's Complaint for Writ of Mandamus.

**INTRODUCTION**

1. Paragraph One consists of Petitioner's conclusions of law for which no answer is necessary.
2. Respondents admit that Petitioner filed her I-485 application on June 3, 2005; however, Respondents deny the remaining allegations in Paragraph Two.

**JURISDICTION and VENUE**

3. Paragraph Three consists of Petitioner's allegation regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Respondents deny the allegations in this paragraph.
4. Paragraph Four consists of Petitioner's allegations regarding venue, to which no responsive

1 pleading is required; however, to the extent a responsive pleading is deemed necessary,  
2 Respondents deny the allegations in this paragraph.

3 5. Paragraph Five consists of Petitioner's allegations regarding intradistrict assignment, to  
4 which no responsive pleading is required; however, to the extent a responsive pleading is deemed  
5 necessary, Respondents are without sufficient information or knowledge to either admit or deny  
6 that Petitioner's allegations regarding intradistrict assignment.

### 7 **PARTIES**

8 6. Respondents admit the allegations in Paragraph Six.

9 7. Respondents admit the allegations in Paragraph Seven.

10 8. Respondents admit the allegations in Paragraph Eight.

11 9. Respondents admit the allegations in Paragraph Nine.

12 10. Respondents admit the allegations in Paragraph Ten with the exception that Rosemary  
13 Melville is the District Director for District 21.

### 14 **FACTUAL ALLEGATIONS**

15 11. Respondents admit the allegations in Paragraph Eleven.

16 12. Respondents admit the allegations in Paragraph Twelve.

17 13. Respondents admit the allegations in Paragraph Thirteen.

18 14. Respondents admit that the I-485 was signed on March 7, 2005, however, it was not  
19 properly filed with USCIS until June 3, 2005.

20 15. Respondents admit that the G-325A was completed and signed on March 7, 2005, however,  
21 it was not properly filed with USCIS until June 3, 2005.

22 16. Respondents admit that the G-325A was completed and signed on March 7, 2005, however,  
23 it was not properly filed with USCIS until June 3, 2005.

24 17. Respondents admit that the I-765 was completed on an unknown date, however, it was not  
25 properly filed with USCIS until June 3, 2005.

26 18. Respondents admit that the I-130 was completed and signed on May 25, 2005, however, it  
27 was not properly filed with USCIS until June 3, 2005.

28 19. Respondents admit the allegation in Paragraph Nineteen.

1 20. Respondents admit the allegations in Paragraph Twenty with the exception that the Notice  
2 for the Interview was dated September 29, 2005, not June 3, 2005.

3 21. Respondents admit the allegations in Paragraph Twenty-One.

4 22. Respondents are without sufficient information to admit or deny the allegations in  
5 Paragraph Twenty-Two.

6 23. Respondents admit the allegations in Paragraph Twenty-Three.

7 24. Respondents admit the allegations in Paragraph Twenty-Four.

8 25. Respondents admit the allegations in Paragraph Twenty-Five.

9 26. Respondents are without sufficient information to admit or deny the allegations in  
10 Paragraph Twenty-Six.

11 27. Respondents are without sufficient information to admit or deny the allegations in  
12 Paragraph Twenty-Seven.

13 28. Respondents are without sufficient information to admit or deny the allegations in  
14 Paragraph Twenty-Eight.

15 29. Respondents admit the allegations in Paragraph Twenty-Nine.

16 30. Respondents are without sufficient information to admit or deny the allegations in  
17 Paragraph Thirty.

18 31. Respondents are without sufficient information to admit or deny the allegations in  
19 Paragraph Thirty-One.

20 **CAUSE OF ACTION**

21 32. Respondents incorporate their responses to Paragraph One through Thirty-One as if set  
22 forth fully herein.

23 33. Respondents admit that the Petitioner is the subject of an approved I-130 petition.  
24 Respondents deny the remaining allegations in Paragraph Thirty-Three.

25 34. Respondents are without sufficient information to admit or deny the allegations in  
26 Paragraph Thirty-Four.

27 35. Paragraph Thirty-Five consists of Petitioner's conclusions of law for which no answer is  
28 necessary.

36. Paragraph Thirty-Six consists of Petitioner's conclusions of law for which no answer is necessary.

37. Paragraph Thirty-Seven consists of Petitioner's conclusions of law for which no answer is necessary.

#### **PRAYER FOR RELIEF**

The remaining paragraph under the heading "Prayer for Relief" consists of Petitioner's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Respondents deny this paragraph.

#### **FIRST AFFIRMATIVE DEFENSE**

Petitioner's petition fails to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(6) because Petitioner cannot establish that Respondents' duty to act is ministerial, that no other adequate remedy is available, or that Petitioner have a clear right to the relief sought. *See* 28 U.S.C. § 1361.

WHEREFORE, Respondents pray for relief as follows:

That judgment be entered for Respondents and against Petitioner, dismissing Petitioner's petition with prejudice; that Petitioner take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: August 10, 2007

Respectfully submitted,

SCOTT N. SCHOOLS  
United States Attorney

/s/  
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Assistant United States Attorney  
Attorneys for Respondents